



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **NOV 06 2013** OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary:


PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will sustain the appeal and approve the petition.

The petitioning entity seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in business or as a member of the professions holding an advanced degree. The petitioner is a commodities trade and supply company that seeks to employ the beneficiary as its manager. The beneficiary is the company's founder and sole employee. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner established that the beneficiary qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner initially claimed that the beneficiary qualifies for classification as an alien of exceptional ability in business. Prior to the denial of the petition, the director disputed the beneficiary's eligibility for that classification, and stated: "the beneficiary is a member of the professions holding an advanced degree." The petitioner accepted this conclusion, while still asserting the beneficiary's eligibility for classification as an alien of exceptional ability in business.

In making the above finding, the director relied on the beneficiary's possession of a master of business administration degree from the [REDACTED]. Possession of an advanced degree is not sufficient for the classification; the beneficiary must also be a member of the

professions, defined as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." 8 C.F.R. § 204.5(k)(2). The petitioner has not claimed or established that a baccalaureate degree is the minimum requirement for self-employment in commodity sales. Therefore, the petitioner has not claimed that the beneficiary is a member of the professions.

The petitioner has, however, submitted sufficient evidence of the beneficiary's exceptional ability in business under the U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. §§ 204.5(k)(3)(ii)(A), (B), and (F). The statute and regulations make no further distinction between an alien of exceptional ability and a member of the professions holding an advanced degree, and therefore this substitution makes no substantive difference to the outcome of the petition or the appeal. There is no dispute that, apart from the job offer requirement, the beneficiary qualifies for classification under section 203(b)(2) of the Act.

The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

The Service [now USCIS] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (NYSDOT), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The

petitioner's assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on March 6, 2012. In an accompanying letter, the beneficiary stated:

[T]hroughout my 18 years in the business field, I have demonstrated an exceptional ability to identify new market opportunities and to develop the infrastructure and systems required to turn these opportunities into real business ventures.

In many instances, my work has contributed to the improvement of local and national economies in several countries. For example, when I was transferred to the headquarters of my first employer in Argentina with the responsibility of developing new business for its construction division . . . [i]n two short years I developed the private sector subdivision from the ground up into a \$50 million a year enterprise. When I was later assigned to the industrial division of the company with the responsibility of creating new business opportunities, I identified the opportunity to enter the U.S. market with the supply of specialized aluminum alloy wires. . . . I successfully coordinated and oversaw the development of the technology . . . , the set-up of warehousing and distribution channels in the U.S., and the control of price fluctuations and currency exchange risks associated with this commodities trading business.

In 2005, while working for a German company that specializes in building cement plants around the world . . . I observed a need in different regions of the [United States] for a reliable and affordable distributor of raw materials. . . . I then decided to start my own business venture in the U.S., capitalizing on this market opportunity, the business contacts that I have developed over the years in the commodities sector and my solid knowledge of the intricacies of this sector.

[The petitioner] is dedicated to the commercialization and distribution of raw materials for the construction industry. . . . A business of this nature and magnitude is very difficult to set up and it normally requires the dedicated work of several business professionals and the financial and logistical support of a well established

organization. However, in the context of a less than favorable economic climate, I was able to single handedly jump-start this business enterprise. . . . I managed inventory planning and risk, logistics planning, and, more importantly, receivables risk, as many of the company's clients defaulted on their debts. The company is now in a solid financial position, with 52 clients and a strong presence in nine states around the country.

The commodities sector is largely serviced by large industrial groups that monopolize the business, at times holding supplies when they are most needed to force price hikes. . . . My company can deliver supplies to any customer site in the country within 24 hours, thanks to our strategic locations in nine states.

Another way in which my business has been beneficial to U.S. businesses is in the provision of soft credit lines . . . at a time when credit to small and medium sized businesses is very restricted. . . .

My immediate and long-term goal is to increase sales volumes by expanding my customer-base and my business presence to other states; identifying opportunities for the export of American products; formulating and blending my own brand products; and setting up my own bagging and trans-loading facility for distribution in the U.S. and for export to other countries. The implementation of these goals will result in direct or indirect job creation at the local level and further benefit the country's economy by providing steady raw materials through fair business practices to manufacturers in different industries.

In the course of conducting business for my company, I have not only provided good quality raw materials to American companies at fair, competitive prices, but also on several occasions I have helped U.S. companies to stay in business or expand their operations.

For example, starting in 2006 I developed a market for [REDACTED] a local marble and limestone producer in that state, when more than 2,400 tons of their products were distributed through my company. Thanks to this increase in their production volume, [REDACTED] was able to expand and upgrade its crushing and bagging facility in [REDACTED] California, which resulted in job creation and contributed to the growth of the local economy.

Also in 2006, I came to the rescue of [REDACTED] the largest manufacturer of electrical conductors in the U.S., which was suffering the effects of a nation-wide shortage of aluminum rods. . . . I was able to arrange for the import of enough supply of aluminum rods to keep [REDACTED] in active production.

When the construction industry in the country came to a near standstill in October of 2008, I restructured the business quickly by diversifying my product line. At the

time, the plastics and packaging industry was facing shortages of Polyethylene Terephthalate (PET), a raw material for the production of plastics. . . . I was able to secure 4,000 tons of PET for distribution to plastics manufacturers in the U.S.

In 2009, continuing the diversification of the business, I brokered a major "energy swap" deal between an Ohio utility company and a large European mining company. Through this deal, the U.S.-based utility company benefited from the purchase of raw materials such as coal, at competitive prices. This venture also resulted in purchases of U.S.-manufactured mining equipment for a value of more than \$7 million, as well as the creation of mining and engineering employment opportunities in Ohio.

. . . The personal contacts and impeccable reputation that I have cultivated within the international business community throughout 18 years as a multinational manager have proven to be very valuable to the U.S. economy, when I have been able to secure a steady supply of raw materials at competitive prices in times of shortages, thereby averting potential production crises.

The petitioner provided considerably more detail about its business ventures in a 51-page business plan submitted with the petition. In terms of direct job creation, the business plan indicated the company's intention to hire two workers (an administrative assistant and "an engineer with a sales background" for "logistics and order taking") in the short term, and, later, an unspecified number of managers and equipment operators for its planned "warehousing and bagging operations."

Printouts from the petitioner's web site indicate that the company "is a specialized distributor of [redacted] for the swimming pool plastering industry." The "Products" page of the web site shows two products, [redacted]. The printouts from the web site and the company's Facebook page do not show that the company sells anything other than white cement. Advertisements in conference programs indicate that the company also sells pool sand.

The petitioner's initial submission included witness letters spanning more than 12 years. In a letter dated November 30, 2011, [redacted] director of [redacted] Argentina, stated:

[The beneficiary] joined [redacted] in 1998. [The beneficiary] was hired to develop new business through the development of new markets in geographical areas where our company had no presence at that time. . . .

Several new businesses were achieved as a result of negotiations conducted by [the beneficiary]. . . . These new businesses were crucial for the survival of the company and its capability to maintain all the existent job positions and developed new jobs in the new areas.

The exceptional work of [the beneficiary] in this company made great changes. He efficiently open[ed] new markets, the presence of our company in such[] markets lasted for the long term. In some markets, our company developed an important local reputation.

We are proud to say that [the beneficiary] in this company [was] able to create thousands of jobs, including direct and indirect workforce and, through our project execution, we were able to make basic necessities, such as electricity, available for millions of people from South and Central America.

In a November 15, 2011 letter, [redacted] president of [redacted] stated:

[The beneficiary] presented a project to the company for the production of Specialized Aluminum Drawn Wires for Mechanical, Welding and Electrical applications. At that time, there were only two companies in the world capable of making such alloys, Alcan in Canada and Pechiney in France. They controlled the world market.

... With time, we successfully developed the necessary alloys and with [the] help of [the beneficiary] we opened and managed our office in the USA with [its] own warehousing [sic] capabilities, in California, for distribution throughout the country.

On June 11, 2007, [redacted] vice president of [redacted] Austria, stated:

[redacted] ... is involved in trading large volumes of commodities around the world such as metals and minerals, chemicals and plastics, wood and wood products as well as providing logistics, structured finance and financial services. ...

The majority of the commodities that we supply are traded on a daily basis on the exchange and prices fluctuate with high volatility. Thus, price risk is a major variable in our business. A price drop can trigger clients to cancel purchase[] agreements or re-negotiate on the commodity terms for shipment or storage.

For this reason we have established a long term cooperation agreement for the assistance and development of our products with [the petitioner] in the United States of America. We believe this company has the training knowledge, and the expertise to monitor our markets, stay in close touch with customers, prospects and attend seminars in order to anticipate any market moves against our physical purchases. ...

Our cooperation, with [the petitioner], begun with the purchase and finance of Portland Cement for distribution in the USA market with over USD 2 Millions in sales in 2006. We are currently working together to continue to grow this business and in addition to repeat this model into other metals and plastics products.

The petitioner submitted copies of invoices, photographs, and other evidence relating to its purchase of cement and other materials from suppliers, their storage in warehouses, and sale to customers.

On July 23, 2012, the director issued a request for evidence (RFE), stating that the petitioner's initial submission did not establish the national scope of the beneficiary's work for the petitioner, or that the beneficiary has a past record of success with some degree of influence on the field. The director acknowledged that the petitioner had provided figures regarding the beneficiary (such as the amount of his investment in the company), but the director stated that the petitioner had not established that these figures are unusual or otherwise distinguish the beneficiary in his field.

In response, the beneficiary stated:

With one hundred customers located in nine different States, nine American suppliers located in four different States and more than four international sources of imported materials, my distribution network employs not only direct labor but significant indirect labor nationwide. . . .

On the demand side, our activity has not only helped small family business to get started, but also to grow employment and maintain it during times of economic downturn. . . .

I currently manage a customer base of approximately eighty family businesses and approximately twenty three private companies. . . .

These companies are located nationwide and they rely solely on me for steady supply, competitive prices and custom credit lines. Many of these companies would not stay in business without our presence in the marketplace.

The petitioner submitted letters, mostly from business owners who credited the beneficiary with helping them remain in business. For example, [REDACTED] California, stated: "When we first started our business it was difficult to get vendors [to] extend credit to us so that we could purchase material in bulk to have better pricing. . . . Thanks to [the beneficiary] not only have we been able to grow our business but [we are] also able to compete against larger companies."

[REDACTED] now at [REDACTED] was general manager of [REDACTED] when he began working with the petitioner in 2005. He stated: "In our peak year, he assisted in helping us distribute over 12,000 MT (est. \$3.5 million) of our white cement into small and medium pool plasterers and distributors. His hard work assists in benefitting the local regions with work for truckers, warehousing companies, pool plasterers and the small to medium sized business owners."

commercial director of [REDACTED] previously headed the [REDACTED] Mr. [REDACTED] stated:

Our objective was to introduce our [REDACTED] products in the United States market. . . . In a very short period of time he introduced to [REDACTED] customers that are qualified as the biggest [REDACTED] buyers in [the] United States. . . .

Working with [the beneficiary] was an enriching experience because he is capable to manage sales and find new accounts in a[] form that a traditional sales agent or representative would never be able to do it.

. . . He brought to [REDACTED] innovative logistics solutions that made the company more competitive and allowed growth and consolidation in the market. . . .

[The beneficiary] has marked a new tendency in commodity trading companies. . . . [T]he big producers or traders of raw materials find more feasible to place their products through skillful agents or representatives such as [the beneficiary] instead of selling to large distributors. This new model of distribution allows the producer to have a more fluid communication with the final user, more flexibility and more competitiveness that is beneficial for the producer and more importantly for the final consumer.

. . . [The beneficiary] set an example in the industry of trading that is being followed by large producers worldwide.

[REDACTED] president of California's [REDACTED] California, stated: "During the last three years, [the beneficiary] has provided a stable source of supply, great service and strategic credit lines that help[] our company to stay in business and grow during difficult times."

[REDACTED] now owner of [REDACTED] Utah, was formerly the vice president of [REDACTED] California, when the petitioner contracted with that company for shipments into the [REDACTED] He "found [the beneficiary] to be a good businessman and more importantly a man of high character."

[REDACTED] director of [REDACTED] Switzerland, who stated:

Recently, we relied on [the beneficiary's] project assessment for the production of coal in the state of Ohio. [The beneficiary] participated in finding the right partnerships and he was responsible for ensuring logistics, renewing feasibility and partnership agreements. The project derived in an investment in American equipment and supplies for more than 7,000,000 US dollars and the hiring of mining engineers and personnel for the production of 25,000 tons of coal monthly. This project had an important and positive impact in the community of [REDACTED] County of

Ohio. [The beneficiary] was named Secretary and Treasurer and performed his duties surpassing regular standards.

To corroborate witnesses' claims about a near-monopoly in the market for pool construction supplies, the petitioner submitted a September 20, 2012 story from the web site, reporting:

and the manufacturers known in the industry as are being accused of anti-competitive activity in a lawsuit that the plaintiffs are hoping will gain class action status. . . .

All [defendants] are accused of violating the Sherman Antitrust Act, which prohibits activities that restrain trade or commerce. also is accused of violating the section of the law prohibiting monopolies.

The case was spurred by an investigation involving the Federal Trade Commission last November. After a 1½-year-long inquiry, the FTC accused of pressuring manufacturers not to sell to new distributors entering the market.

The director issued a notice of intent to deny the petition on December 3, 2012. The director acknowledged the intrinsic merit and national scope of the beneficiary's occupation, but found that the petitioner had not shown that the beneficiary's accomplishments have had an impact and influence that distinguish him from others in the field. The director acknowledged the witness letters, and quoted from examples, but stated: "the petitioner did not submit any letters from individuals who have not worked with (or who are not personally acquainted with) the beneficiary. The letters of support speak in general terms . . . [and] do not mention that the beneficiary has influenced the field, apart from his colleagues and peers."

In response to the notice, the beneficiary asserted that labor certification "is not realistic," because he owns the petitioning company, and the Department of Labor "would not consider the alien capable of being impartial in searching for his replacement." USCIS acknowledges that there are certain occupations wherein individuals are essentially self-employed, and thus would have no U.S. employer to apply for a labor certification. The inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. *NYSDOT* at 218 n.5.

The beneficiary stated that USCIS "has been proactively reaching out to entrepreneurs," and quotes a USCIS press release regarding the Entrepreneurs in Residence initiative." The beneficiary made the general observation that "[t]he above noted program is specifically meant for entrepreneurs." The beneficiary stated that "this web portal . . . holds little meaning" if its only purpose is "pointing out pathways that already existed, without some additional consideration to retain those that have proven their contribution to business and society." The beneficiary did not identify the "additional consideration." The press release that the beneficiary quoted did not announce any policy change.

Instead, it stated: "we are working to realize our current immigration system's full potential to attract and retain" job-creating enterprises. The Entrepreneurs in Residence program encourages entrepreneurs to seek benefits through already-existing channels; it has not created new ones, or established that entrepreneurs are subject to lower standards than those that apply to other intending immigrants.

The petitioner submitted copies of previously submitted letters, emphasizing his role in helping other businesses to remain viable under difficult economic circumstances. He also submitted a new letter from [REDACTED] senior research analyst at [REDACTED] who stated:

Part of the [petitioning] company's success is correlated to [the beneficiary's] ability to identify market fluctuations in markets that the company can serve quickly and efficiently. . . .

When dealing with nearly commoditized product, it is the trust and credibility of the supplier organization that differentiates it from its competitors. The credibility of a company and the trust it inspires flows directly from those of its representatives. [The beneficiary] is the sole representative of [the petitioner], and it would be nearly impossible to find any person who has the experience to inspire such trust and projects the integrity that [the beneficiary] inspires and projects.

. . . In the raw materials markets, companies such as [REDACTED] try to "roll-up" an industry and maximize profitability by exploiting the economies of scale that result from such a strategy. Many smaller customers who must buy raw inventory from an industry that has materially consolidated are unable to get the product or the financing required because they are unable to command service from these larger suppliers.

[The petitioner] fills this gap by holding inventory and providing financing to these smaller customers. Amazingly, they are able to do this with inventory that is perishable. This is all because of [the beneficiary's] unique ability gained through experience to hold the necessary inventory while minimizing the risk to [the petitioner]. By having inventory on hand, [the petitioner] is able to react to any market dislocations created by the activities of the larger material suppliers.

Another unique skill that [the beneficiary] possesses is the ability to obtain financing of his receivables so that he can extend financing to his customers when they are unable to get any terms from larger competitors. . . . From experience in obtaining financing for my own companies, I can confidently state that . . . [o]btaining financing for even the most liquid medium-to-smaller size [business] is very difficult.

. . . If [the beneficiary] and [the petitioner] were not present in the markets they serve, it is not a stretch to state that raw material price increases and availability would claim the lives of some of its smaller customers.

... Through [the beneficiary's] experience and diligent efforts, the company now occupies an admirable location in the supply chain where it not only provides unique services to its customers, but also offers the same to its suppliers. ...

[The petitioner] is a vital supplier of raw materials, especially to smaller companies. [The petitioner] provides the risk management and purchasing flexibility for smaller manufacturers that larger companies do not wish to supply to companies who will not significantly increase their volumes.

The director denied the petition on March 4, 2013. In the decision, the director repeated passages from earlier notices and stated that the petitioner's response to the notice of intent to deny included "additional letters of support . . . and information about the USCIS 'Entrepreneur in Residence' initiative." The director concluded: "The petitioner has not established that the beneficiary stands apart from others in the field. The evidence does not show that the beneficiary already has a track record of success with some degree of influence on the field."

On appeal, counsel states:

the Petitioner cited the USCIS' "Entrepreneurs in Residence Initiative," a matter directly relevant to this case where the USCIS is specifically courting aliens of this type. However, the only discussion of it in the denial was one line that stated that the petitioner submitted "information about the USCIS 'Entrepreneur in Residence' initiative." It did not state whether or not the Director believed that this initiative had any bearing on or relevance to the petitioner's case.

Counsel asserts that the petitioner's response to the notice of intent to deny was "largely ignored, unfairly discounted or given little weight by the Service Center Director." Counsel maintains that the petitioner had established the beneficiary's influence by submitting "dozens of letters from businesses that attested that their activities would have been severely hampered or would have altogether ceased to exist if it were not for the services that the alien provides."

The director had acknowledged the letters, and quoted some of them, but found their weight limited because of the witnesses' business relationships with the petitioner. The director, for example, stated: "[redacted] notes that the beneficiary is 'a good businessman and more importantly a man of high character,'" and the director stated that Mr. [redacted] had "done business with the petitioner and the beneficiary."

In the initial appeal statement, counsel states: "a letter from Mr. [redacted] (who we believe was confused with Mr. [redacted] . . . was discounted too because the author 'has done business with the petitioner.' . . . [T]his is not true." In a subsequent brief, counsel makes a similar assertion:

a letter from a business expert, Mr. [redacted] . . . was discounted too because the author has "done business with the petitioner." Firstly, this is not true. Mr. [redacted] is an independent business expert who has not done business with the alien.

Secondly, they were confusing this letter with another one where the author, who had the same first name as Mr. [REDACTED] had done business with the alien.

According to his letter, [REDACTED] has done business with the beneficiary, and the director accurately quoted Mr. [REDACTED] letter to that effect. The director's decision did not mention Mr. [REDACTED] or mistake him for someone who has done business with the petitioner and the beneficiary.

Counsel appears to suggest that Mr. [REDACTED] is an independent expert whose assertions did not receive due consideration. The petitioner has provided letters from credible witnesses who have provided specific details about the beneficiary's efforts. The record corroborates Mr. [REDACTED] main assertions by showing that the petitioner helped many small businesses survive by circumventing monopolistic practices by major suppliers and by extending otherwise unavailable credit to customers.

The beneficiary is not responsible for product development, and therefore he would not influence his field by introducing new products or improving existing ones. His impact, instead, arises from his transaction of business. The materials in the record show that his impact extends beyond customer satisfaction. The petitioner has established that the beneficiary's efforts have helped many small companies stay in business, and have otherwise had positive effects, individually and cumulatively, beyond the success and longevity of his own business ventures. These factors, rather than the beneficiary's role as an entrepreneur alone, secure the approval of the petition.

The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established by a preponderance of the evidence that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, the petitioner bears the burden of establishing eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has met that burden.

ORDER: The appeal is sustained.